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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,557	11/03/2003	Allan Lyle Cox		1115

7590 04/20/2004

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EXAMINER

SWIATEK, ROBERT P

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/698,557	Applicant(s) COX, ALLAN LYLE	
	Examiner Robert P. Swiatek	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Lack of a reference to the “reciprocal actuator medium of adapted form secured to” the pendulum like member.

The disclosure is objected to because of the following informalities: On page 1, the serial number of applicant’s provisional application as listed is incorrect and it should be changed to –60/423,429–, on page 4, line 17, “apparatus” should be changed to –device or structure 100–; reference numerals 1-3 are used interchangeably to refer to both “items” and “shafts”—the specification should be amended so these reference numerals refer only to –shafts–. On page 4, lines 21, 23, it is unclear what is meant by the expression “in relative posture to”; on page 5, line 2, –one of– should be inserted before “a” and the term “mechanism” should be changed to –mechanisms–; on page 7, line 2, the phrase “Within end portion 18 of shaft 2 hollow 19” is unclear.

Appropriate correction is required.

The abstract of the disclosure is objected to because in line 1, “is disclosed” should be deleted; use of the term “said” should be avoided. Correction is required. See MPEP § 608.01(b).

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the

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invention. In line 3, the expression “attached sway/swivel mechanism” is alternative in nature and lacks antecedent basis—it should be changed to either –an attached sway mechanism– or –an attached swivel mechanism–, in line 5, “incorporating” should be deleted, lines 5-7 are otherwise difficult to understand and should be amended so they clearly recite an element or characteristic of the invention previously set forth in the specification.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

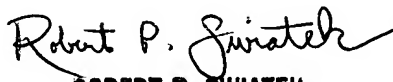
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Herman (US 2,707,937). The patent to Herman depicts an animal amusement device 11 composed of a rigid pendulum member 12 having a “load mass” in the form of bells 24 attached to one end and a suspension element 13 attached at its opposite end. An intermediate element 16 is interposed between the bells and suspension element 13 and is deemed to constitute “a reciprocal actuator medium of adapted form.”

The patents to Peirano (US 320,960) and Hann (US 5,881,679) have been cited to provide additional examples of animal amusement devices.

RPS: J703/308-2700
19 April 2004


ROBERT P. SWIATEK
PRIMARY EXAMINER
ART UNIT 323 3643